
TITLE 326 AIR POLLUTION CONTROL DIVISION

FIRST NOTICE OF COMMENT PERIOD

LSA Document #15-414

NO_x EMISSIONS FROM LARGE INDUSTRIAL BOILERS (NON-ELECTRIC GENERATING UNITS) AND REPEAL OF NO_x TRADING PROGRAMS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules to [326 IAC 10](#) concerning nitrogen oxide (NO_x) emissions for the ozone season from large industrial boilers, also known as non-electric generating units (non-EGUs), on the repeal of the nitrogen oxides budget trading program at [326 IAC 10-4](#), the Clean Air Interstate Rule (CAIR) at [326 IAC 24-1](#), [326 IAC 24-2](#), and [326 IAC 24-3](#), and on a change to the CAIR reference in the Regional Haze rule at [326 IAC 26-1-5](#). IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 10-2](#); [326 IAC 10-3](#); [326 IAC 10-4](#); [326 IAC 24-1](#); [326 IAC 24-2](#); [326 IAC 24-3](#); [326 IAC 26-1-5](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

The United States Environmental Protection Agency (U.S. EPA) finalized the Cross State Air Pollution Rule (CSAPR) to reduce the interstate transport of fine particulate matter and ozone on July 6, 2011, with publication in the Federal Register (FR) on August 8, 2011 (76 FR 48208). The final rule replaces U.S. EPA's 2005 Clean Air Interstate Rule (CAIR), which was remanded by a December 2008 court decision that kept CAIR in place temporarily while directing U.S. EPA to issue a replacement rule. *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). See also *North Carolina v. EPA*, 531 F.3d 896, 901 (D.C. Cir. 2008). CSAPR requires 28 states, including Indiana, in the eastern half of the United States to significantly improve air quality by reducing nitrogen oxides (NO_x) and sulfur dioxide (SO₂) power plant emissions that cross state lines and contribute to ground-level ozone (O₃) and fine particle (PM_{2.5}) pollution in other states. The SO₂ requirements under CAIR have been replaced by CSAPR. The NO_x requirements under CAIR are being addressed in this rulemaking.

The timing of CSAPR's implementation has been affected by a number of court actions. On December 30, 2011, CSAPR was stayed prior to implementation. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Dec. 30, 2011) (order granting motions to stay). On August 21, 2012, the D.C. Circuit Court vacated CSAPR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012). On April 29, 2014, the U.S. Supreme Court issued an opinion reversing the August 21, 2012, D.C. Circuit decision. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). Following the remand of the case to the D.C. Circuit, U.S. EPA requested that the court lift the CSAPR stay and delay (toll) the CSAPR compliance deadlines by three years. On October 23, 2014, the D.C. Circuit granted U.S. EPA's request. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014) (order granting motion to lift stay). Accordingly, CSAPR Phase 1 implementation started January 1, 2015, with Phase 2 beginning in 2017.

As part of the state CAIR rules at [326 IAC 24-3](#), IDEM included large industrial boilers/non-EGUs in the NO_x State Implementation Plan (SIP) Call trading rules as part of the CAIR ozone season NO_x trading program. As allowed under the federal CAIR program, Indiana's state CAIR rule for the NO_x ozone season had expanded the applicability provisions to bring in all non-EGUs that had traded under the NO_x SIP Call as a group. U.S. EPA is not allowing non-EGUs to be included in CSAPR. CSAPR also does not allow an opt-in program as was provided in CAIR.

With implementation of CSAPR now in effect, NO_x SIP Call requirements remain in place for non-EGUs. States that relied on large non-EGUs for emission reductions required by the NO_x SIP Call will need to identify another way to ensure continued compliance with the NO_x SIP Call. The NO_x SIP Call generally requires that states choosing to rely on non-EGUs for meeting NO_x SIP Call emission reduction requirements must establish a NO_x mass emissions cap on each source and require monitoring in accordance with 40 CFR 75, Subpart H. U.S. EPA is allowing states that have non-EGUs to demonstrate that current emission rates at maximum ozone season operating hours will emit below the NO_x SIP Call budget as a group. EPA is not requiring enforceable caps on either individual non-EGUs or all of the non-EGUs as a group. The demonstration will need to be updated when new non-EGUs are permitted by the department.

IDEM is proposing to amend state rules to move monitoring requirements for non-EGUs at [326 IAC 24-3-11](#) to the NO_x rules at [326 IAC 10](#). In the future, the only requirements for the trading program non-EGUs would be to monitor for NO_x in accordance with 40 CFR 75, Subpart H. There would be no emission cap requirement. IDEM

will work with U.S. EPA and affected sources to determine what monitoring provisions from [326 IAC 24-3-11](#) are appropriate to retain, along with any other necessary language from CAIR. Some non-EGUs, such as certain blast furnace gas-fired boilers, fall under an alternative category of being subject to NO_x emission rate limits and were not a part of the NO_x trading program. These units will remain subject to the NO_x emission rate limits in [326 IAC 10-3](#). IDEM anticipates that [326 IAC 10-3](#) will need to be amended to remove the reference to the trading program and add a new reference to the revised monitoring rules that will apply to non-EGUs.

IDEM is also proposing the repeal of the NO_x budget trading program at [326 IAC 10-4](#) and CAIR at [326 IAC 24](#). A sunset clause was added to the NO_x budget trading program at [326 IAC 10-4-16](#) when CAIR replaced the NO_x budget trading program. The NO_x budget trading program was not repealed at that time because the rule was still needed for documenting compliance after the end of the ozone season. It is now no longer needed and can be repealed. The three trading programs (NO_x annual, NO_x ozone season, and SO₂ annual) have been replaced by the federal CSAPR rules and are no longer needed.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Repeal [326 IAC 10-4](#) and [326 IAC 24](#) and keep the necessary monitoring requirements for the non-EGUs.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not amend state rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

This rulemaking is related to the federal CSAPR rule signed by the U.S. EPA administrator on July 6, 2011, and published in the Federal Register on August 8, 2011 (76 FR 48208). The provisions in the NO_x SIP Call rules at 40 CFR 51.121(i)(4) require states that regulate fossil fuel-fired NO_x sources serving electric generators with a nameplate capacity greater than 25 megawatt electrical (MWe) or boilers, combustion turbines, or combined cycle units with a maximum design heat input greater than 250 million British thermal units per hour (MMBtu/hr), to monitor according to provisions of 40 CFR 75, Subpart H.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. There is no cost burden on affected sources because these sources are already regulated by a similar program under CAIR. Affected sources will continue to incur operating and maintenance costs for monitoring that was required under CAIR.

Potential Fiscal Impact of Alternative 2. There is no cost burden associated with this alternative because affected sources are currently required to monitor under the SIP. If IDEM does not amend the state rule and request a SIP revision from U.S. EPA the current SIP would continue to apply. However, the state rules need to be amended for consistency with federal requirements and to ensure the provisions are enforceable under state law.

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Patricia Daniel
IDEM Small Business Regulatory Coordinator
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-6562 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 4-4-35-8](#) is:

Erik Scheub
Office of Small Business and Entrepreneurship
One North Capitol, Suite 600
Indianapolis, IN 46204
(317) 232-5679
ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Steven N. Howell
IDEM Small Business Assistance Program Ombudsman
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8587 or (800) 451-6027
snhowell@idem.in.gov

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Jack Harmon, Rules Development Branch, Office of Legal Counsel at (317) 234-9535 or (800) 451-6027 (in Indiana). IDEM will contact and meet with affected sources as additional information is obtained from U.S. EPA on how to proceed with this rulemaking.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #15-414 [Non-EGU NO_x Emissions]
Jack Harmon
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to jaharmon@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than January 8, 2016. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Jack Harmon, Rules Development Branch, Office of Legal Counsel (317) 234-9535 or (800) 451-6027 (in Indiana).

Nancy King, Chief
Rules Development Branch
Office of Legal Counsel

